

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of)	
)	
Request for Waiver by)	
)	
Highline School District 401)	
Seattle, Washington)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-06
Support Mechanism)	
)	

REQUEST FOR REVIEW AND/OR WAIVER

Funding Year 9 (July 1, 2009 to June 30, 2010)
Billed Entity Name: Highline School District 401
Billed Entity No.: 145196
Billed Entity FCC Registration No.: 0012957460
Form 471 Nos.: 678756, 678954 and 692920
Funding Request Numbers: 1853665, 1853678, 1853689, 1853702, 1853745,
1853748, 1853779, 1853814, 1853820, 1853888, 1853900, 1853906, 1854137,
1854140, 1854163, 1854164 and 1901021

I. Introduction and Background

The undersigned is the Director of Technology for Highline School District 401 (Highline), a Washington State school district which is an applicant under the Universal Service Support Mechanism for Schools and Libraries, commonly known as the E-rate program. I respectfully request review of the Administrator's BEAR Notification Letter or alternatively, a waiver of the rule that requires denial of payment for services provided prior to the Form 486 Service Start Date. Due to extenuating circumstances, explained below, the Form 486 was not filed in a timely fashion, and therefore the Service Start Date was changed by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) to the date 120 days prior to the postmark of my Form 486 (i.e., March 2, 2010). I did not have notice of this change until I received a Form 472 (BEAR) Notification Letter dated October 8, 2010¹, issued by informing me of the denial of the requested BEAR payments.

¹ While the BEAR Notification Letter covers only nine of the above referenced FRNs (all from Form 471 Number 678756), the Form 486 affects all referenced FRNs, so I respectfully ask that you consider the totality of the circumstances and provide the requested relief in respect of all listed FRNs.

For Funding Year 2009 Highline had three Forms 471, noted above. The Funding Commitment Decision Letters were dated October 20, 2009 (for Form 471 Number 692902), November 10, 2009 (for Form 471 678954) and December 30, 2009 for Form 471 678756. The Form 486 (Receipt of Service Confirmation Form) is to be filed within 120 days after the Service Start Date listed on the Form 486 or 120 days after the FCDL, whichever date is later. For Form 471 692902, which has only one FRN, for internal connections, the expected Service Start Date would have been more than 120 days after the date of the FCDL (October 20, 2009). For the other two Forms 471, 120 days after the date of the FCDL would have been the later date (and the expected time to file the Form 486). That would have made the time for filing March-April 2010.

Unfortunately life sometimes takes unexpected and dismal turns. In early March 2010 my wife was the innocent victim of a violent mugging, which left her with both physical and psychological problems. Having three small children at home, I needed to be at home in order to deal with things while my wife was incapacitated. I was totally absent from the office through August and for partial days in September of 2010.

While my administrative assistant tried to assist with E-rate notifications, I did not have access to all the district files necessary to manage timelines and the E-rate process. As the only person at Highline officially tasked with E-rate matters, there were a number of items related to E-rate and other matters, which not surprisingly, escaped my attention or fell through the cracks during this difficult time. As the Commission has noted in other instances,² even when a school official becomes adept at the application process, unforeseen events or emergencies may delay filings in the event there is no other person proficient enough to complete the forms.

Given all that was going on, it wasn't until late June 2010 that I realized the Form 486 had yet to be filed. I was able to complete the form and file it electronically, but I did not realize that the Service Start Date had been changed.

The Form 486 Notification Letter³ was sent to the Highline office in mid July 2010. Again, as I was absent from the office, I did not see the letter and my administrative assistant, who is not well versed in E-rate requirements, did not understand the significance of the funding report and the impact of a Service Start Date beginning nine months into the Funding Year, so it was not brought to my attention.⁴

² See *Alaska Gateway School District, et al.*, DA 06-1871, para. 7

³ A copy of the Form 486 Notification Letter dated July 14, 2010 is attached.

⁴ The financial impact of changing the Service Start Date to March 2, 2010 is a reduction of funding totaling \$498,057.75 for all 17 FRNs included in the Form 486.

The first time that I became aware of the discrepancy between the Service Start Date as listed (March 2, 2010) and the actual Service Start Date of July 1, 2009 was in October 2010 when I submitted a BEAR form covering nine of the FRNs on Form 471 Number 678756. That BEAR was totally denied and the reason given was "Billed Date Before 486 Service-Start Date." That caused me to go back and research the Form 486 filing and uncover the discrepancy.

II. Legal Standard

A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied* 409 U.S. 1027 (1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *See Northeast Cellular*, 897 F.2d at 1166.

III. Discussion

As indicated above, based on the dates of the Funding Commitment Decision Letters, the appropriate time to file the Form 486 would have been in the March-April timeframe. However, due to the extreme stress that I was under at the time and given circumstances at home, the impending deadline failed to register in my mind. Prior to the March 2010 incident I had been planning on filing the Form 486 in a timely fashion. Had the situation been different, I am confident that the Form would have been appropriately filed. (It is noted that in past years I did not have any trouble meeting the deadline or filing an accurate form.)

As a result of the *Alaska Gateway* case⁵ the Commission created a mechanism to give applicants as much notice as possible that the Form 486 deadline is approaching (or has passed). SLD now issues an Urgent Reminder letter when an applicant has not filed the Form 486. In fact, Highline received this reminder in mid-May⁶. Unfortunately, again, the administrative assistant was just not prepared to comply with this letter nor did she understand its significance.

⁵ See *Alaska Gateway School District, et al.*, DA 06-1871, para. 8

⁶ The letter was dated May 5, 2010. This is further evidence that the March-April timeframe would have been sufficient for filing the Form 486 in a timely fashion.

Therefore, I did not have notice that the Form 486 deadline had passed. As indicated above, as soon as I became aware of the need to file the Form 486, I did so, completing the Form online.

As the Commission has stated previously, a departure from required filing deadlines may be warranted upon careful review of the Petitioner's case and when doing so will serve the public interest. *See Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al.*, 21 FCC Rcd 5316, para. 9.

Had the Form 486 been properly completed with a Service Start Date reflecting the reality that recurring services started on July 1, 2009, and if the Commission granted the requested departure from the deadline, then Highline would be entitled to the full funding commitment amount originally contained in the relevant Funding Commitment Decision letters. Now, due to the change in Service Start Date to March 2, 2010 date, Highline is in the position of forfeiting almost \$500,000 of expected E-rate discount reimbursements. This comes at an especially bad time, as you must be aware that budgets everywhere are very limited and the state of Washington faces a shortfall of almost \$2 billion for the next biennium.

If Highline doesn't have the chance to recover the \$500,000 (for these expenses have already been incurred) through BEAR reimbursements, it will be required to use funds that otherwise would be spent in the classroom, and thus, the denial of a waiver will negatively impact the education of almost 18,000 innocent children.

IV. Prayer for Relief

For the reasons stated above, Highline respectfully requests that the requirement that the Form 486 be filed within 120 days of the Service Start Date featured in the Form 486 or 120 days of the Funding Commitment Decision Letter, whichever is later, be waived for Funding Year 2009.

The failure to meet the deadline was due to circumstances beyond my control and yet with grave consequences to Highline. There has been no fraud, waste or abuse, and this is a single year request. Highline has demonstrated compliance with E-rate rules and policies in the past, although we acknowledge that increased training (which we have undertaken) can result in improvements.

I believe that I have demonstrated that rigid compliance with SLD's Form 486 procedures would not further the purposes of section 254(h) or serve the public interest and would inflict undue hardship on Highline and its students and that therefore, granting the request waiver is an appropriate remedy.

Respectfully submitted,



Mark J. Finstrom
Director, Technology Services
Highline School District 401